



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Lynda D. Eisenberg, AICP, Director

FAX 410-313-3467

January 26, 2024

Anna Lancaster (alancaster@ecdcommunities.org)

Enterprise Homes
875 Hollins Street, Suite 202
Baltimore, MD 21201

RE: WP-24-036, Waverly Winds

Dear Ms. Lancaster:

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

On January 10, 2024 and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Recreation and Parks and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to **Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations to remove 8 specimen trees. Please see the attached Final Decision Action Report for more information.

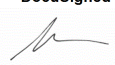
Approval of this Alternative Compliance is subject to the following conditions:

1. The removal of the specimen trees shall be mitigated with a 2:1 replacement with native 3" DBH trees.

Indicate this alternative compliance petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, and site development plans, and building permits. This alternative compliance approval will remain valid for one year from the date of this letter or as long as a subdivision or site development plan is being actively processed in accordance with the processing provisions of the Regulations.

If you have any questions, please contact Jill Manion at (410) 313-2350 or email at jmanion@howardcountymd.gov.

Sincerely,

DocuSigned by:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/jam

cc: Research
DLD - Julia Sauer
Real Estate Services
Anne Gilbert - DNR anne.gilbert@maryland.gov
GLW



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3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

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ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

DEPARTMENT OF PLANNING AND ZONING
DEPARTMENT OF RECREATION AND PARKS
OFFICE OF COMMUNITY SUSTAINABILITY

RE: **WP-24-036, Waverly Winds**
Request for a variance to Section 16.1205(a)(3) of the Howard County Code.

Applicant: **Enterprise Homes**
875 Hollins Street, Suite 202
Baltimore, MD 21201
Anna Lancaster (alancaster@ecdcommunities.org)

Pursuant to Section 16.1216, the Director of the Department of Planning Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for a variance with respect to **Section 16.1205(a)(3)** of the Forest Conservation Regulations. The purpose is to 8 trees measuring 30 inches in diameter or larger:

- #446: 30" DBH Pin Oak* in poor Condition with surface root damage/decay and crown deadwood.
- #447: 39" DBH Northern Red Oak in fair condition with surface root damage, decay and fungus.
- #449: 36" DBH Northern Red Oak in good condition with large deadwood in crown.
- #450: 46" DBH Willow Oak in poor condition with trunk decay and large deadwood in crown.
- #453: 32" DBH Pin Oak in fair* condition with surface root damage/decay, large deadwood in crown and broken limbs.
- #460: 30" DBH Silver Maple in good condition but with a narrow truck crotch within split trunk.
- #465: 33" DBH Willow Oak in poor* condition due to basal rot and branch decay.
- #469: 36" DBH Willow Oak in good* condition but with root damage/decay and deadwood in crown.

**#446 was found to be a Japanese Pagoda which is not native to Maryland, #453 was found to be good to fair per DRP, #465 was found to be good to fair per DRP, #469 was found to be good to fair per DRP.*

The Directors deliberated the application in a meeting on January 10, 2024.

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in an unwarranted hardship. This determination is made with consideration of the alternative compliance application and the six (6) items the applicant was required to address, pursuant to Section 16.1216:

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship.

The subject property is being redeveloped for mixed-income housing in accordance with an amendment to the Preliminary Development Plan for New Town approved by the Howard County Zoning Board under Case No. ZB 1120M. The Findings of Fact and Conclusions of Law outlined in the Decision and Order for ZB 1120M found that the increase in density requested for these five sites is justified based on the General Plan's goal of providing a full spectrum of housing and the current paradigm to integrate market rate units with varying levels of income-based units to reduce the concentration of residents based on income. The conditions of approval of ZB 1120M require that the five properties redeveloped under the PDP amendment, at the minimum, retain its existing density but promotes an increase of density on all of the sites provided that no more than 100 additional units be placed on any one of the five properties.

Waverly Winds is the third property that is being redeveloped under ZB 1120M, which was approved prior to the change to Section 16.1202(b)(1)(ii) of the Howard County Code that limited the exemption to the Forest Conservation Act for Planned Unit Developments to only apply to homeowners' associations that have a Forest Stewardship Plan drafted by MDE and for certain Howard County Public School System properties within the NT boundaries. Due to the timing of the ZB 1120M approval and the conditions placed to direct how the 300 new units are distributed, the conceptual plans for each of the sites was formulated by the developer and submitted for federal Low Income Housing Tax Credits (LIHTC) prior to the enactment of CB 66-2021 that required the developer to meet forest conservation requirements on these sites. The competitive tax credits were awarded by Federal Government and the applicant cannot redesign to accommodate the elimination of the Forest Conservation Act exemption without losing the awarded credits. A redesign to preserve the specimen trees would also likely result in reduced density that may not be able to be fully absorbed in the remaining two Enterprise Home communities slated for redevelopment under ZB 1120M.

In addition to these constraints, the distribution of the specimen trees and their critical root zones on the physical site severally impacts the available buildable area. Furthermore, most of the trees proposed for removal, based both on the applicant's forest professional and inspection of the trees by the Department of Recreation and Parks, are in fair to poor condition, are structurally unsound, exhibit damage or decay at the base or root, and/or have dead wood in the tree canopy. One of two trees identified in good condition is a multi-trunk Silver Maple, which is considered an invasive species in the Landscape Manual and is located directly behind existing units with a fence constructed through the tree trunk, all of which make it structurally unsound in the long term. Photo exhibits of all the trees requested for removal was included with the application to demonstrate the health and location of the tree, demonstrating the difficulty of demolishing the existing structures to redevelop the site without severely impacting the trees that exceed 30" in DBH.

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas.

The trees that meet the measurement criteria under Section 16.1205(a)(3) in the Howard County Code are not located within a forest community. They are landscape trees that have grown to maturity but are showing varying stages of decline in their current environment. Almost all the trees are in close proximity to existing building foundations, sidewalks and curbing, and/or fencing. Demolition of existing buildings and paving alone, will have severe impact to the trees and their root zones no matter how the redevelopment is configured. There are no feasible design alternatives that would not have impact to the specimen trees since any new apartment structures will still require utility upgrades and parking.

All but two of the trees are deemed to be in fair or poor health. One of two trees found to be in good condition is a Silver Maple (#446), an invasive species that is prohibited in the Landscape Manual. It is located in close proximity to an existing structure and has fencing that is constructed on either side and through the tree. Most importantly has

multiple trunks that increase compromise its structural integrity, increasing the likelihood of tree failure that would result in risk to property and life. Strict enforcement of the regulations would create burden on the applicant to save trees found to be in fair to poor health located in close proximity to the existing structures or curb and sidewalk. These circumstances would deprive the landowner the opportunity to redevelop this property and replace deteriorating housing to construct a residential development that addresses the community housing goals outlined in the Howard County General Plan.

Only one tree, a northern red oak (#449) located along the eastern property boundary and identified by the forest submission and DRP to be in good condition, exhibits the greatest case for protection due to its health, species, and relative distance to the existing development and demolition field. However, approximately 50% of the critical root zone is located within the limits of disturbance. The committee considered whether it was possible to retain the tree by limiting grading in it's CRZ, but the tree's base would be approximately 10' from the proposed new building footprint. These two factors are weighed against the parameters of ZB 1120M and the efforts of the developer to obtain the tax credits necessary to redevelop the property to meet the General Plan goals to offer full spectrum housing. Additional information was provided by the applicant from a certified arborist that recommended the tree be removed due to the impacts to the CRZ and the concern that the tree would become unstable that would create a hazard to life and property.

3. Verify that the granting of a variance will not adversely affect water quality.

There is no evidence that the granting of a variance will adversely affect water quality. The development is subject to the current Environmental Site Design criteria, which include small filtering processes to address water quality. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants.

Removal of landscape trees that grew to maturity but are in declining health due to stresses of the growing environment does not create a special privilege that would be denied to other applicants. The site was previously developed for affordable residential housing and is being requested for redevelopment with mixed-use housing that would replace deteriorating structures beyond their operational capacity in order to better meet the Howard County General Plan's full-spectrum housing goals. Most of the trees are in fair to poor condition and in declining stages of health. There are no priority retention areas on this site except for the mature landscape trees that reached the regulatory size requirements. In addition, a similar variance was approved with WP-23-043.

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

In consideration of the approval of ZB 1120M to redevelop the five subject properties to increase full spectrum housing, which predates the reduced exemption under Section 16.1202(b)(1)(ii), the requested variance is not based on conditions or circumstances which are the results of actions by the development. The location and health of the trees, none of which exist within an existing forest, would make any redevelopment of the property incredibly difficult.

6. Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

There is no evidence that the conditions arose from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

7. Provide any other information appropriate to support the request.

The applicant noted that New Town was designed to protect significant amounts of open space, much of which remains forested. Because of this, the NT zoning district was originally exempt to address Forest Conservation requirement as a Planned Unit Development substantially developed prior to December 31, 1992. The County Council recently narrowed this exempt to only property owned by a homeowner's association or the Howard County Public School System. ZB1120M, which approved an increase in density for the New Town PDP to support the redevelopment of five properties including the Waverly Winds site, was approved prior to the Forest Conservation Act changes. The sequence of these legal decisions should be considered as part of this variance request. DLD concurs with these considerations.

After on-site inspections, in addition to the type and condition of some of the trees notes above, the Department of Recreation and Parks noted that tree #450 is in poor condition and while it appears mostly healthy, there is decay with a large seam makes it structurally unsound; tree #460 is located directly behind existing units and there is an existing fence constructed through the tree; and tree #465 has some decay due to damage but the tree has good vigor, appears healthy and seems to be compartmentalizing fine.

Directors Action: Approval of alternative compliance of Section 16.1205(a)(3) is subject to the following condition:

1. The removal of the specimen trees shall be mitigated with a 2:1 replacement with native 3" DBH trees.

DocuSigned by:

Lynda Eisenberg

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Lynda Eisenberg, AICP, Director
Department of Planning and Zoning

DocuSigned by:

Nicholas Mooneyhan

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Nicholas Mooneyhan, Director
Department of Recreation and Parks

DocuSigned by:

Timothy Lattimer

AEB60003A8F04A0...

Timothy Lattimer, Administrator
Office of Community Sustainability

cc: Research
OCS
DRP
GLW



Howard County Maryland
Department of Planning and Zoning
 3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only: File No. Date Filed
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ALTERNATIVE COMPLIANCE APPLICATION

Site Description: There are currently 7 apartment buildings containing 62 units & a parking lot on this site.

Subdivision Name/Property Identification: Village of Harper's Choice -- Section 3, Area 4 (Lot 3, PB-15, p.30)

Location of property: 5501-5627 Cedar Lane, Columbia MD

Existing Use: Apartments **Proposed Use:** Apartments

Tax Map: 0029 **Grid:** 0023 **Parcel No:** 0271 **Election District:** 5

Zoning District: New Town **Total site area:** 3.707 acres

Please list all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.). If no previous plans have been submitted, please provide a brief history of the site and related information to the request:

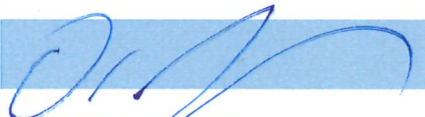
FDP-34, FDP-66, F-68-012, C-279-S, C-284-W&S, SDP-68-006, SDP-74-031, ZB 1120M, and ECP-23-034.
 SDP-23-045 and 24-5230-D (currently active plans).

In the area below, the petitioner shall enumerate the specific numerical section(s) from the Subdivision and Land Development Regulations for which an alternative compliance is being requested and provide a brief summary of the request. Please use the additional page if needed.

Section Reference No.	Brief Summary of Request
16.1205.(a)(3)	Removal of eight (8) trees over 30"DBH.

Section Reference No.	Brief Summary of Request

Signature of Property Owner: *Stacie Birnback* **Date:** 9/26/2023

Signature of Petitioner Preparer:  **Date:** 10-4-2023

Name of Property Owner: Enterprise Community Homes Housing, LLC **Name of Petition Preparer:** Dan Sweeney

Address: 875 Hollins Street, Suite 202 **Address:** 3909 National Drive, Suite 250

City, State, Zip: Baltimore, MD 21201 **City, State, Zip:** Burtonsville, MD 20866

E-Mail: alancaster@ecdcommunities.org **E-Mail:** dsweeney@glwpa.com

Phone No.: (410) 230-3646 **Phone No.:** 410-880-1820

Contact Person: Anna Lancaster **Contact Person:** Dan Sweeney

Owner's Authorization Attached